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Attorney Docket No. 4393-008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re United States Patent Application of F. John HERRINGTON	:Confirmation No 9136
Serial No. 10/657,201	:Group Art Unit: 3679
Filed: September 9, 2003	:Examiner: James M. HEWITT

For: COUPLING MEANS FOR MULTI-WALLED PIPES OR TUBES

AMENDMENT AND RESPONSE,
REQUEST FOR RECONSIDERATION AND
CONTINGENT PETITION TO THE DIRECTOR UNDER
37 CFR 1.181

FILED BY FACSIMILE 1 571 273 8300
JULY 2, 2006

Commissioner of Patents
PO BOX 1450
Alexandria, VA 22313-1450

Sir:

This paper is being submitted in response to the office action dated June 6, 2006. It is not believed that any petition for extension of time to respond to this action is required in order to maintain the pendency of this application. However, if an extension of time is required, kindly consider this to be a petition therefore. It is not believed that any fee is due with the filing of this response. However, if there is any fee that is due, kindly charge the same to the undersigned attorney's deposit account 50-3406.

The Request for Reconsideration and Contingent Petition to the Director are considered to be timely filed as this paper is being filed within one (1) month of the date the last office action was issued. It is not believed that any fee is due with the filing the filing of these papers. However, if any fee is due kindly charge the same to the above written deposit account.

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REQUEST FOR RECONSIDERATION OF THE FINALITY OF THE OUTSTANDING OFFICE ACTION

The outstanding action is a final rejection. The examiner's alleged justification for making this new action final is that "Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.**" (See page 13 of the new Office action)

First, it is pointed out that Applicant's last response, dated March 15, 2006 to the previous Office action issued in this application, dated March 13, 2006 contained no amendments. Therefore, it is impossible that applicant's amendments necessitated a new ground of rejection since applicant made no amendments. On this basis alone, it is requested that the examiner reconsider the finality of the last office action and change the same to a non-final action.

Second, it is clear that the newly cited Hall reference, which dates from 1920, was certainly available to the examiner when earlier office actions were issued in this application. It is unfair and a denial of due process for the examiner to have waited to cite this reference until now and then made this newly cited reference basis for a final rejection. Final rejections severely limit the actions that applicant can take to refute the rejection issued by the examiner. It is unfair to cite a reference for the first time and then not allow applicant the full range of responses (e.g. amendment, argument, introduce new claims, etc.) to the citation that would have been available had the rejection not been made final.

Third, it is clear that the rejections set forth in the instant office action rely for support almost exclusively on the disclosure of this newly cited reference. Claims 1-6, 8-15, and 64-69 are in prosecution in this application at the time of the most recent action. Of these claims, claims 1, 4-6, 9, 11, 12, 65-67 and 69 have been finally rejected as being anticipated by the newly cited Hall patent; claims 8, 10 and 13 have been finally rejected as obvious in view of the Hall patent; and claims 2, 3 64 and 68 have been finally rejected as obvious from a consideration of the Hall patent in view of the Herrington patent. This leaves only claims 14, 15 and 69 not

rejected on the disclosure of the newly cited Hall patent. Of these, claims 14 and 15 have not been rejected on the basis of any art and, although claim 69 has been rejected as anticipated by the Line patent, the examiner has commented that the method of manufacture contained in claim 69 is not considered to be germane to its patentability. This latter point suggests that claim 69 is not rejectable as anticipated by the Line patent for the very reasons suggested by the examiner.

In any case, it is clear that, in the absence of the newly cited Hall patent, many of the claims of this application, namely at least claims 1-8, would be allowable. Because of the newly cited Hall patent, applicant should be given the right to fully respond to rejections based on this citation and not restricted in the means for response.

In view of all of the circumstances, if the examiner wishes to maintain the finality of the rejection, he should withdraw the citation of the Hall patent. In the alternative, if the examiner insists on basing his new rejections on the disclosure of the Hall patent, the finality of the instant grounds of rejection should be withdrawn. This paper should be considered to be a request for reconsideration of the finality of the outstanding rejection and a request to reverse this finality and convert it into a non-final rejection.

CONTINGENT PETITION TO THE DIRECTOR UNDER 37 CFR 1.181 TO EXERCISE HIS SUPERVISORY POWER TO CONVERT THE EXAMINER'S FINAL REJECTION INTO A NON-FINAL ACTION

Contingent upon the examiner refusing to reconsider his position on the finality of the outstanding office action, or contingent upon the examiner refusing to convert the final rejections to non-final rejections, this paper should be considered to be a Petition to the Director under 37 CFR 1.181 to exercise his supervisory authority and cause the finality of the outstanding rejection to be converted to a non-final action. The facts in support of this Contingent Petition are well set forth above and do not need to be repeated here. Suffice it to say, the instant final rejection is a denial of due process to the applicant and is contrary to the Statute, the Rules of Practice and the Manual of Patent Examining Procedure.

A final rejection is only proper where the grounds for the rejection have been twice considered. In this case, substantially the entire outstanding rejection is based on the disclosure of the Hall patent. It has not previously been considered by applicant. In fact, this reference was unknown to applicant until the examiner cited the same. Applicant must be given the opportunity to respond to this citation by amendment of the claims or otherwise without the constraints of a final rejection limiting the responses available to applicant.

It is to be noted that this request for reconsideration, contingent petition and request for entry of amendments is being filed within one (1) month of the mailing date of the last office action. It is therefore most timely. It is impossible to respond to the outstanding final rejection without this request and contingent Petition being first acted on. Therefore should decisions on these requests and petition not be issue before the three (3) month response period expires on September 6, 2006, it is further requested that the fee for filing a petition to extend the response period be waived and the period for response abated until these decisions are reached and communicated to the applicant.

The following amendments and arguments are based on the assumption that the examiner will reverse the finality of the outstanding rejections or that the Director will over rule the examiner and that, in either case, applicant will be permitted to amend and argue this rejection as a non-final rejection. Kindly amend the above referenced application as follows: